

CLEARY GOTTlieb STEEN & HAMILTON LLP

WASHINGTON, DC

PARIS

BRUSSELS

LONDON

FRANKFURT

COLOGNE

MOSCOW

ONE LIBERTY PLAZA

NEW YORK, NY 10006-1470

(212) 225-2000

FACSIMILE (212) 225-3999

WWW.CLEARYGOTTLIEB.COM

ROME

MILAN

HONG KONG

BEIJING

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SÃO PAULO

ABU DHABI

SEOUL

By ECF

September 30, 2014

Hon. Richard M. Berman
United States District Court
For the Southern District of New York
500 Pearl Street, Courtroom 12D
New York, NY 10007

Re: Rio Tinto plc v. Vale S.A., et al., Civil Action No. 14-cv-3042 (RMB) (AJP) (S.D.N.Y.)

Dear Judge Berman:

We represent defendant Vale, in connection with the above captioned matter, and submit this letter in opposition to Plaintiff Rio Tinto plc's application for leave to file a sur-reply in opposition to the Defendants' joint motion to dismiss on grounds of *forum non conveniens*.

In his declaration, Lord Collins offered the opinion that the traditional *forum non conveniens* clause in the Confidentiality Deed is entirely neutral with respect to the issue of whether the forum selection clause is mandatory, either because it applies to both exclusive and non-exclusive jurisdiction clauses at common law or it does not apply at all. This opinion was proper reply. It was in direct response to argument made by Rio Tinto and its expert on that specific issue (*see* Hoffmann Decl., dated Sept. 10, 2014, ¶¶ 13-22), and Lord Collins had clearly indicated in his first opinion that the Brussels I Regulation applies because Rio Tinto is an English company (Collins Decl., dated July 29, 2014, ¶ 26). The fact that Lord Hoffmann chose not to give his opinion on the impact of the applicable Brussels I Regulation on his own *forum non conveniens* waiver argument in his report does not give Rio Tinto a second bite at the apple now that Vale has responded.

This Court appropriately characterized the issue before it as a "a pretty simple dispute" (July 28, 2014 Hr'g Tr. at 10), stating that a plaintiff may not "take a claim that otherwise belongs somewhere else and bring it here just because you call it RICO" —and ordered expedited letter briefing in lieu of a formal motion. (*Id.* at 8.) The motion is now fully submitted and Vale respectfully submits it should be decided.

Respectfully submitted,

By: Lewis J. Liman / EIT
Lewis J. Liman

cc: All Counsel of Record (by ECF)